

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Björn JOHANSSON et al. Conf.: 5909

Appl. No.: 10/542,294 Art Unit: 3644

Filed: July 15, 2005 Examiner: Monica Williams

Title: ARRANGEMENT FOR HOUSING MILKING ANIMALS

Attorney Docket: 19200-000051/US



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Alexandria, VA 22314

Mail Stop Appeal Briefs - Patents**APPELLANTS' REPLY BRIEF UNDER 37 C.F.R. § 41.41**

Madam:

In response to the Examiner's Answer mailed March 19, 2010, Applicants request the appeal be maintained and supply the following arguments in reply under 37 C.F.R. § 41.41(a)(1).

I. STATUS OF CLAIMS:

The Examiner acknowledges in her Answer that the status of the claims set forth in the Appeal Brief is correct. Claims 1-29 are pending. Claims 1-29 currently stand rejected and are the subject of this appeal. Claims 1, 21, 28, and 29 are independent claims. The claims are rejected as follows:

1. Claims 1-7 and 9-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over EP Patent 0608941 to Maasland et al.

("Maasland") in view of EP Patent 1213676 to Harmsen et al. ("Harmsen").

2. Claims 28 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Harmsen in view of Maasland.
3. Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Maasland in view of Harmsen and US Pat 3,261,324 to Conover ("Conover").

Claims 1-29 are being appealed.

II. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL:

Appellant seeks the Board's review of the following rejections:

1. The rejection to claims 1-7 and 9-27 under 35 U.S.C. § 103(a) as being unpatentable over Maasland in view of Harmsen.
2. The rejection to claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Harmsen in view of Maasland.
3. The rejection to claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Maasland in view of Harmsen and Conover.

Claims 1-20, 28, and 29 are argued as a group.

Claims 9, 11, and 21-27 are argued further as a sub-group.

III. ARGUMENT

A. THE EXAMINER DOES NOT EXPLAIN HOW MAASLAND AND HARMSEN MAY BE COMBINED TO MEET THE CLAIMS WITHOUT DESTROYING MAASLAND.

With regard to the animal mixing and segregating limitations of claims 1, 28, and 29, the Examiner admits that passages of Harmsen mix animal groups in milking, resting, or feeding areas of Maasland so that animals may move from group to group. *See* Examiner's Answer mailed March 19, 2010 ("Answer"), paragraph bridging pp. 10-11. The passages of Harmsen may achieve this mixing by segregating animal groups based on, for example, milk production. *Id.* Based on this, the Examiner concludes that "schedules as taught by Maasland would not necessarily be destroyed just by mixing animals from one group with animals from another group." *Id.*

Applicants respectfully reply that, based on the preceding reasoning and teachings of Maasland and Harmsen, the Examiner's conclusion is exactly incorrect - schedules as taught by Maasland would necessarily be destroyed just by mixing animal from one group with animals from another group. As described in the Appeal Brief, pages 19-20, each area of Maasland is associated with an activity for the single animal group occupying that area. *See e.g.*, Maasland, Col. 2, ll. 18-23 (distinct milking, feeding, and shed areas); Col. 2, ll. 24-26 (eight distinct areas for eight animal groups). Timed doors move animal groups through the areas at specific intervals such that activities associated with each area occur at a specific time. *See e.g.*, Maasland, Col. 2, ll. 30+; Col. 4, ll. 14+; FIG. 1 (doors 13, 18, 19, 20, 21 at each area juncture open and close

at specific times). That is, each animal group in Maasland is on a schedule that ties animal group area/activity to a time. *See* Maasland, Col. 3, l. 56 – Col. 5, l. 52 (detailing each group's schedule for each activity and area). This separate group and schedule maintenance is the entire point and operating principle of Maasland, and Maasland says as much. *See* Maasland, Col. 1, l. 44 – Col. 2 , l. 2 (keep groups separate and keep each milking staggered); Col. 3, l. 52 - Col. 4, l. 10 (maintain rigid 1-hour milking period for each group); Col. 6, ll. 27-33 (associating alternate schedules and activities with each of the animal groups permitted)¹.

Replacing only the doors of Maasland, which open and close at specific times to maintain the schedule, with passages of Harmsen, which admittedly permit group mixing in milking/feeding/resting areas, destroys the separate groups and schedule of Maasland. The doors of Harmsen would permit a milking animal in Maasland to pass through any number of different groups and areas, and even be immediately re-milked, if the animals' average milk production was above a certain threshold or if some other animal-specific criteria was met and regardless of the time. Thus, yes, the schedule-based operating principle and group separation goals of Maasland are necessarily destroyed by the doors of Harmsen. Such modification of Maasland is not

¹ Applicants further note that the prosecution history of Maasland supports a requirement that its groups be kept separate. Claim 1 of the Maasland application EP 0 608 941 A1 originally did not recite separate groups but was amended during prosecution to recite both separate groups and separate areas for a respective group and allowed in Maasland patent EP 0 608 941 B1.

permissible under § 103. *See DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1326-28 (Fed. Cir. 2009).

As an aside, in the Answer, the Examiner points to paragraph [0037] of Harmsen for teaching passages 12.i that segregate based on animal group membership. While the Examiner admits that Harmsen's passages permit group mixing (Answer at 11), Applicants respectfully reemphasize that paragraph [0037] does not otherwise indicate that the passages of Harmsen can segregate among animals of set groups at a particular time, so as to preserve Maasland's milking schedule. First, paragraph [0037] never teaches or suggests passages using a schedule or time to permit animal passage. Second, where paragraph [0037] states that access may be conditioned on group membership, it is referring to individual age and animal status, such as sick, low milk yield, or recently fed, not whether an animal is a member of a specific group scheduled for an activity associated with the area. *See, e.g.,* Harmsen ¶¶ [0026], [0031] (discussing group criteria). Any animal may still switch groups and areas in Harmsen if its individual status changes; for example, only if an animal is sick, the animal is permitted into area 10.1 at any time. *See, Harmsen ¶¶ [0023], [0035].* Thirdly, because the passages 12.i in Harmsen discriminate among several animals as to which gain access from a first area to a second area, the animals in the first area are necessarily already mixed, or no discrimination would be required. *See, Harmsen ¶ [0037]* (passage 12.i is opened for some animals and not opened for other animals

presented to passage 12.i at a given time). For example, when passage 12.2 grants passage to feeding area 10.3 from milking area 10.2 for only animals of a particular groups and denies the same passage for other groups, all animals are already mixed in milking area 10.2 and able to milk at any time. In this way, Harmsen requires group mixing and does not permit scheduled milking. As such, Applicants agree with the Examiner that Harmsen clearly teaches passages that permit animals to switch between different groups and for individual animal groups to be mixed.

Because the area/activity schedule of Maasland is necessarily destroyed by using Harmsen's passages permitting group mixing in each area/activity, and because claims 1, 28, and 29 fairly require animal groups to be mixed at some point and subsequently re-separated in the groups, Applicants have shown error in the Examiner's modification of Maasland with Harmsen under § 103(a). Applicants respectfully maintain their request that the Board overturn the rejections under § 103(a) to claims 1-7, 9-20, 28 and 29.

B. THE DOORS OF MAASLAND DO NOT PROVIDE ACCESS TO A SUBSET ONLY OF AT LEAST ONE MILKING ROBOT OR MILKING BOX.

With regard to the resting area sections and milking area linked so as to permit access to a subset of milking robot/boxes as recited in claims 9 and 21, respectively, the Examiner answers that the resting areas 4-11 of Maasland are linked to the milking area 2 by door 20, which permits or denies access to

milking area 2. *See Answer*, paragraph bridging pp. 11-12. The Examiner further suggests that Applicants' claims read on Maasland's arrangement because FIGS. 2 and 3 of the present application show the same arrangement.

Id.

Applicants respectfully reply that, as described in the Appeal Brief, pages 21-22, door 20 does not link resting areas 4-11 and milking area 2 so as to limit animal access to a subset of milking robots or boxes. Rather, walls of and between resting areas 4-11 and milking area 2 link these two areas and determine which areas are accessible to milking animals in the resting areas 4-11. These walls in Maasland link resting areas 4-11 to all milking compartments 31/32 in the milking area. *See* Maasland, FIG. 1. That is, any animal departing areas 4-11 has access to each compartment 31/32 by the way areas 4-11 is linked to these compartments 31/32 by walls therebetween. The Examiner's assertion that door 20 is partially open does not account for this linking deficiency of door 20. There is a single milking robot in area 2 of Maasland, and door 20, like each other door in Maasland, is either open or shut in order to enforce the schedule discussed in the previous section. *See* Maasland, Col. 2, ll. 49-52; Col. 3, ll. 21-27. Even if door 20 did link areas 4-11 and milking area 2, door 20 of Maasland either permits access to the milking one robot and milking compartments 31/32 (door 20 is open) or permits access to no milking compartment 31/32 or milking robot (door 20 is shut). A "subset of milking boxes/at least one milking robot" cannot be zero, because zero is not a "subset" and zero would provide no "access" as recited in

claims 9 and 21. Thus, door 20 fails to achieve a resting area section “linked to said milking area so that milking animals housed in the respective section have access to a subset only of said plurality of milking boxes” because it does not link resting area sections with a milking area and does not limit access to a subset of milking boxes or robot.

Lastly, Applicants respectfully reply that, to the degree that the claims are interpreted in accordance with the specification during prosecution, the specification does not disclose resting area sections being linked to a subset of milking boxes/robots in milking areas by a door like in Maasland. As shown in FIG. 3 of the current application, movable partitions 55 clearly link individual sections of resting area 1 to only some milking boxes 51. No door shuts off all access to all milking boxes for all sections, like in Maasland. As such, Applicants respectfully submit that the Examiner cannot rely on FIG. 3 for endorsing a claim construction that reads on Maasland.

Because the Maasland, alone or in combination with Harmsen, possesses unaccounted-for differences between each and every feature of claims 9 and 21, these references further cannot render obvious claims 9 or 21, and Applicants have shown error in the Examiner’s *prima facie* case of obviousness under § 103(a). Applicants respectfully maintain their request that the Board overturn the rejections under § 103(a) to claims 9, 10, and 21-27, even if the rejections to claim 1 are for some reason affirmed.

IV. CONCLUSION

Appellants respectfully maintain their request that the Board reverse the Examiner's rejections of the pending claims 1-29.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,
HARNESS, DICKEY, & PIERCE, P.L.C.

By:

John A. Castellano, Reg. No. 35,094
P.O. Box 8910
Reston, Virginia 20195
(703) 668-8000

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JAC/REA
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